IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Appl. No.428 of 2005

Date of decision :- 13.07.2005

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 13.07.2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.428 of 2005

Prakash S/o Nihala
R/o village Aurangabad
P.S. Ranipur
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Binu S/o Sushil Kumar Chuhan
3. Sukhpal S/o Phullu Chauhan
4. Vinod @ Langra S/o Lahor
5. Suresh S/o Suchet Chauhan
6. Kallu S/o Banarsi
7. Brijpal s/o Chamela
8. Madan S/o Sukkhad
9. Ashok S/o Raja Ram
   All R/o village Aurangabad
   P.S. Raipur district Haridwar
10. Karan S/o not known
    R/o village Jahanpur
    District Saharanpur .....Respondents

Date:- 13th July, 2005

Hon'ble J.C.S. Rawat, J.

This petition under section 482 Cr.P.C. has been filed by the applicant for directing the C.J.M., Haridwar to accept the prayer of the applicant and permit him to withdraw his petition No.2998/1988 Prakash Vs. Binu & others.

The factual position in a nutshell is that on 7.10.1998, the applicant filed a criminal complaint in the court of C.J.M., Haridwar against the respondent Nos.2 to 10 under sections 323, 325, 504, 506 I.P.C. & 3/10 Harizan Atrocities Act and the same was registered as case No.2998/1988. Thereafter, the applicant filed an application on 7.1.2005 in the court of CJM Haridwar alleging therein that both the parties have made a compromise and as such the proceedings initiated against the private respondents may be withdrawn

under section 257 Cr.P.C. The learned CJM has rejected the said application vide its order dated 25.1.2005. Feeling aggrieved, the applicant has come up before this Court.

The learned counsel for the applicant has submitted that the applicant is a poor person and he does not want to proceed further against the respondents. On this ground, the present petition has been filed with the prayer to direct the CJM Haridwar that the applicant may be permitted to withdraw his case.

The learned counsel for the applicant contended that since the parties have amicably settled their dispute outside the court, hence the applicant may be permitted to withdraw the case under section 257 Cr.P.C.

It is pertinent to mention here that the case, which has been filed against the respondents, is a warrant case and it is not the summon case. Section 257 Cr.P.C. is applicable in summons cases only. There is no provision for withdrawal of the complaint in the warrant cases. Section 257 Cr.P.C. is applicable to Chapter 20 Cr.P.C., which deals with the summons trial.

The learned counsel for the applicant further contended that the parties have amicably settled their dispute and as such the proceedings may be quashed under section 482 Cr.P.C. learned A.G.A. refuted the contention and contended that Section 320 Cr.P.C. specifically categorized the list of the compoundable offences and non-compoundable offence. Some of the sections involved in the present petitions are not compoundable. As such, the permission to compound the non-compoundable offences cannot be granted. Section 320(9) Cr.P.C. specifically provides that no offence shall be compounded except as provided by this Section. Perusal of Section 320 Cr.P.C. reveals that the

Court has no power to decide the non-compoundable offence by way of a compromise. The Hon'ble Supreme Court has held in **Ram Lal & another Vs. State of J & K 1999(2) SCC p/213** that :-

> *"4. It is apparent that when the decision in Mahesh Chandra Vs. State of Rajasthan 1990(Supp.) SCC p681 was rendered, the attention of the learned Judge was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges, who rendered the decision in Suresh Babu drawn. Hence, those were decisions rendered pre incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compoundable at all. The offence under section 326 IPC is, admittedly, non-compoundable and hence, we cannot accede to the request of the learned counsel to permit the same to be compounded."*

In view of the above, I am of the view that the permission to compound the offences cannot be granted. The petition devoids of merit and is dismissed accordingly.

Dated 13.7.2005 (J.C.S. Rawat, J.)

LSR